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Memorandum No. 57(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Organization of Proposed Legislation)

Attached to this memorandum as Exhibit I (yellow pages) is an outline of the portion of the Government Code that will contain most of the Commission's recommended legislation. This outline is presented to you so that you may determine how the Commission's legislative program should be organized.

The staff suggests that the Commission's recommendations be presented to the Legislature by several bills:

- (1) General Liability Statute
- (2) Revision of Claims Statutes
- (3) Insurance
- (4) Defense of Public Officers and Employees
- (5) Workmen's Compensation Benefits
- (6) Vehicle Code Changes

This scheme will permit relatively noncontroversial recommendations to proceed through the legislative process without being prejudiced by the controversy that will be engendered by some of the other recommendations. It must be recognized, though, that it is possible for any of the Commission's proposals to fail to be enacted. Hence, the bills introduced by the Commission should be complete, i.e., the legislative scheme contained in each bill should make sense even though no other bill is enacted. In order that all enacted legislation will fit into an orderly scheme, at least two of the bills (items (3) and (4) listed above) must contain a "Double Jointing Clause," which results in duplicate provisions--one set to become effective if certain other legislation is enacted, another set to become effective if the other

legislation is not enacted. Bills of this sort are frequently introduced into the Legislature, particularly when a code or a large portion of a code is being revised. This technique seems necessary here. See the revised tentative recommendations on insurance and defense which contain these provisions.

The proposed Division 3.6 that is attached would completely supersede the existing Division 3.5. Division 3.6 would be created by the general liability statute. Division 3.5 would be repealed by the bill enacting Parts 3 and 4 of Division 3.6. Parts 3 and 4 will contain the proposed legislation that will replace the existing claims statute. If the claims bill does not pass, Division 3.5 would remain in the code, and Parts 3 and 4 would not appear in Division 3.6.

A section outline has been included (in Exhibit I, attached) for most of Parts 3 and 4. This section outline includes all legislation proposed by the Commission relating to claims. The sections in Division 3.5 that have been left untouched by Commission recommendations have been placed in appropriate places in Parts 3 and 4. The section outline is very tentative; it is included merely to demonstrate that the Commission's recommended legislation and existing statutes can be integrated into a sensible scheme. Some portions of Parts 3 and 4 are still under consideration by the Commission and, hence, there may be some revisions of this scheme. For example, some of the special provisions relating to actions against the State may be made applicable to all entities; and this would necessitate moving a section from one article to another. But the section outline presents the basic scheme.

Although the details of proposed Division 3.6 shown on Exhibit I are still tentative, the overall scheme should nonetheless be approved by the Commission. This will permit the final assignment of section numbers to some of the approved legislation and will permit the staff to make arrangements to have the approved recommendations set in type. At the October meeting, the staff proposes to present to the Commission the insurance and defense recommendations to approve for printing. This cannot be done, however, unless the basic plan for the organization of the legislation has been approved. Moreover, we hope to have preprints of our bills made. This will serve two purposes: First, we will have the bills available for distribution to interested persons, and the interim committees will have our recommendations available in bill form. Second, we plan to use the same type as is used to preprint the bill for printing our printed pamphlet containing our recommendation. This will result in substantial savings in printing costs. If we do this, the length of the lines in the recommended legislation will be shorter than for the length of the lines in the text of the recommendation. However, we believe that the saving in printing costs will more than justify this difference in length of lines.

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

D I V I S I O N 3.6  
C L A I M S A N D A C T I O N S A G A I N S T  
P U B L I C E N T I T I E S A N D P U B L I C O F F I C E R S  
A N D E M P L O Y E E S

PART 1. DEFINITIONS

§§ 810-811.4

PART 2. LIABILITY OF PUBLIC ENTITIES AND PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 1. GENERAL PROVISIONS RELATING TO LIABILITY

Article 1. Liability of Public Entities

§§ 815-817.2

Article 2. Liability of Public Officers and Employees

§§ 820-821.8

Article 3. Indemnification of Public Officers and Employees

§§ 825-825.6

CHAPTER 2. DANGEROUS CONDITIONS OF PUBLIC PROPERTY

Article 1. Liability of Public Entities

§§ 830-831.4

Article 2. Liability of Public Officers and Employees

§§ 835-835.6

CHAPTER 3. POLICE AND CORRECTIONAL ACTIVITIES

§§ 840-840.8

CHAPTER 4. DAMAGE BY MOBS AND RIOTS

§§ 845-845.8

CHAPTER 5. FIRE PROTECTION

§§ 850-850.8

CHAPTER 6. MEDICAL, HOSPITAL AND PUBLIC HEALTH ACTIVITIES

§§ 855-855.8

[CHAPTERS 7 - 20 RESERVED]

CHAPTER 21. TORT LIABILITY UNDER AGREEMENTS BETWEEN PUBLIC ENTITIES

§§ 895-895.8

CHAPTER 22. INDEMNITY AGREEMENTS

§§ 898-898.2

PART 3. CLAIMS AGAINST PUBLIC ENTITIES AND PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 1. GENERAL

Article 1. Definitions

§ 900. Meaning of "board."

Article 2. General provisions

§ 905. Claims against local entities, coverage of and exceptions to Chapters 1 and 2

§905.2. Claims against State covered by Chapters 1 and 2.

§905.4. Causes of action for which no claim required.

§905.6. Establishment of claims procedures by agreement: local entities.

§905.8. Establishment of claims procedures by agreement: State.

§906. Chapters 1 and 2 not exclusive means for presentation of claims to Legislature

§906.2. Part 3 creates no liability.

CHAPTER 2. PRESENTATION AND CONSIDERATION OF CLAIMS

§ 910. Contents of claim.

- § 910.2. Claim forms provided by board.
- § 910.4. Amendment of claims.
- § 910.6. Notice of insufficiency of claims.
- § 910.8. Waiver of insufficiency by failure to notify.
- § 911. Manner of presentation of claims, notices, applications, etc.
- § 911.2. Time for presentation of claims.
- § 911.4. Accrual of cause of action for purposes of computing time.
- § 911.6. Application to entity to file late claim.
- § 911.8. Action by board upon application to file late claim.
- § 912. Notice of board's action upon application to file late claim.
- § 912.2. Petition to court for leave to file late claim.
- § 912.4. Time of presentation of late claim.
- § 912.6. Action by local entity upon claim.
- § 912.8. Action by State upon claim.
- § 913. Payment of claim against State where appropriation exists.
- § 913.2. Automatic denial of insured claims (State only).
- § 913.4. Notice of action upon claim.
- § 913.6. Time limit for action upon claim.
- § 913.8. Manner of presentation of notice by mail.

CHAPTER 3. PROCEEDINGS TO DETERMINE CONSTITUTIONALITY OF CLAIMS  
AGAINST THE STATE

§§ 920-920.8.

CHAPTER 4. PRESENTATION OF CLAIMS TO STATE CONTROLLER

§§ 925-926.8.

CHAPTER 5. CLAIMS PROCEDURES ESTABLISHED BY LOCAL PUBLIC ENTITIES

§ 930. Procedure for claims excepted from Chapters 1 and 2.

§ 930.2. Creation of claims board to receive and consider claims.

§ 930.4. Delegation of claims settling authority to employee.

PART 4. ACTIONS AND JUDGMENTS AGAINST PUBLIC ENTITIES AND PUBLIC OFFICERS  
AND EMPLOYEES

CHAPTER 1. ACTIONS AGAINST PUBLIC ENTITIES

Article 1. General

§ 940. Consent to suit.

§ 940.2. Claim as prerequisite to suit.

§ 940.4. Rules of practice applicable.

§ 940.6. Limitation of actions upon claims.

§ 940.8. Limitation of actions where no claim required.

§ 941. Claimant's acceptance of amount allowed as bar to action.

§ 941.2. Mandamus available to enforce allowed claim.

Article 2. Special Provisions Relating to Actions Against the State.

§ 945. Undertaking for costs.

§ 945.2. Venue.

§ 945.4. Service of summons in, and defense of, actions for taking public property for public use generally

§ 945.6. Service of summons in, and defense of, actions for taking public property for public use by Department of Water Resources.

§ 945.8. Service of summons in, and defense of, other actions

§ 946. Amount of judgment, interest, costs.

CHAPTER 2. PAYMENT OF JUDGMENTS AGAINST STATE

§ 950. Warrants: Judgments in Actions under Vehicle Code Sections 17001-17002.

§ 950.2. Payment of other judgments.

§ 950.4. Governor's report to Legislature of judgments not under Vehicle Code.

CHAPTER 3. PAYMENT OF TORT JUDGMENTS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

§§ 955-956.2.

Article 2. Funding Judgments Against Local Public Entities with Bonds

§§ 960-963.4.

Article 3. Payment of Tort Liabilities of Dissolved Local Public Entities

§§ 965-968.6.

CHAPTER 4. ACTIONS AGAINST PUBLIC OFFICERS AND EMPLOYEES

§§ 970-970.6.

CHAPTER 5. COUNSEL FEES IN ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC OFFICERS AND EMPLOYEES

§§ 975-976

PART 5. INSURANCE COVERAGE FOR LOCAL PUBLIC ENTITIES AND PUBLIC OFFICERS

AND EMPLOYEES

§§ 990-991.2.

PART 6. DEFENSE OF ACTIONS BROUGHT AGAINST PUBLIC OFFICERS AND

EMPLOYEES

§§ 995-996.6.